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JUN - 6 2005

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

FILED

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 CHET & LEO PRODUCE CO. d/b/a  
13 C&L PRODUCE, a California  
14 corporation,

15 Plaintiff,

16 vs.

17 CASSANDRA, LLC d/b/a CENTRAL  
18 PARK RESTAURANT, a California  
19 Limited Liability Company;  
20 TIMOTHY M. CASS, an individual;  
21 and SANDRA R. FREEMAN, an  
22 individual,

23 Defendants.

Case No.:

C05-02282

TEMPORARY RESTRAINING  
ORDER

24 This matter is before the Court upon Plaintiff's Ex-Parte Motion for  
25 Temporary Restraining Order pursuant to Rule 65(b) of the Federal Rules of Civil  
26 Procedure. Pursuant to Rule 65(b), a temporary restraining order may be granted  
without notice to the adverse party only if: (1) it clearly appears from specific

TEMPORARY RESTRAINING ORDER

1 facts shown by affidavit or verified complaint that immediate and irreparable  
2 injury, loss or damage will result before the adverse party can be heard in  
3 opposition, and (2) the applicant's attorney certifies the reasons that notice  
4 should not be required.

5  
6 In this case, it clearly appears from the affidavit of Chester E. Lievre, Jr.  
7 that Plaintiff Chet & Leo Produce Co. d/b/a C&L Produce is a produce dealer  
8 and trust creditor of Defendant Cassandra, LLC d/b/a Central Park Restaurant  
9 ("Central Park Restaurant") under Section 5(c) of the Perishable Agricultural  
10 Commodities Act (PACA), 7 U.S.C. §499e(c), and have not been paid for produce  
11 in the total amount of \$107,158.43 supplied to said Defendant as required by the  
12 PACA. It is also clear from the same affidavit and the certification of counsel  
13 that said Defendant is in severe financial jeopardy and the PACA trust assets are  
14 being dissipated or threatened with dissipation (Frio Ice, S.A. v. Sunfruit, Inc.,  
15 918 F.2d 154 (11th Cir. 1990)) and that said Defendant is not or may not be in a  
16 position to pay creditor's claim (JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d  
17 75 (2d Cir. 1990)), thereby warranting the relief requested by Plaintiff. On the  
18 basis of the pleadings, affidavit and other submissions Plaintiff has filed in this  
19 matter, it appears Plaintiff will suffer immediate and irreparable injury due to  
20 said Defendant's dissipation of Plaintiff's beneficial interest in the statutory trust  
21 created pursuant to 7 U.S.C. §499e(c) and that such dissipation will continue in  
22 the absence of injunctive relief. Therefore, the Court is of the opinion that a  
23  
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26

1 Temporary Restraining Order should be issued.

2 If notice is given to Defendant of the pendency of this motion, trust assets  
3 will be further threatened with dissipation before the motion is heard. As noted  
4 in the legislative history of PACA, once dissipation has occurred, recovery of  
5 trust assets is all but impossible. H.R. Rep. No. 543, 98th Cong., 2d Sess. 4 (1983),  
6 reprinted in 1984 U.S. Code & Admin. News 405, 411. J.R. Brooks & Son, Inc. v.  
7 Norman's Country Market, Inc., 98 B.R. 47 (Bkrtcy. N.D.Fla. 1989). Entry of this  
8 Order without notice assures retention of the trust assets under the control of this  
9 Court which is specifically vested with jurisdiction over the trust. 7 U.S.C.  
10 §499e(c)(5). In accord with Rule 65(b)(2), the applicant's attorney has certified  
11 why notice should not be required.

12 Based on the foregoing, the Court finds that Plaintiff and other PACA trust  
13 creditors, if any, will suffer immediate irreparable injury in the form of a loss of  
14 trust assets unless this order is granted without notice.

15 Therefore, it is by the United States District Court for the Northern District  
16 of California

17 **ORDERED:**

18 2. Defendant Cassandra, LLC d/b/a Central Park Restaurant ("Central  
19 Park Restaurant"), its agents, officers, subsidiaries, assigns, banking and financial  
20 institutions, and all persons in active concert or participation with said  
21 Defendant, are enjoined and restrained from dissipating, paying, transferring,  
22

1 assigning or selling any and all assets covered by or subject to the trust  
2 provisions of the PACA without agreement of Chet & Leo Produce Co. d/b/a  
3 C&L Produce, or until further order of this Court. Under §499e(c)(2) of PACA,  
4 the assets subject to this order include all of the assets of Central Park Restaurant  
5 unless Central Park Restaurant can prove to this Court that a particular asset is  
6 not derived from perishable agricultural commodities, inventories of food or  
7 other products derived from perishable agricultural commodities or receivables  
8 or proceeds from the sale of such commodities or products. Provided however,  
9 Central Park Restaurant may sell perishable agricultural commodities or  
10 products derived from perishable agricultural commodities for fair  
11 compensation, without right of set-off, on the condition that Central Park  
12 Restaurant maintains the proceeds of such sale subject to this Order.  
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16 3. This Order shall be binding upon the parties to this action and all  
17 other persons or entities who receive actual notice of this Order by personal  
18 service or otherwise.

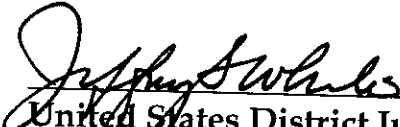
19 4. The \$107,158.43 in PACA trust assets belonging to Plaintiff and in  
20 the possession of the Defendant will serve as Plaintiff's security for this  
21 injunction as required by Rule 65(c) of the Federal Rules of Civil Procedure.  
22

23 5. This Temporary Restraining Order is entered this 7<sup>th</sup> day of June,  
24 2005 at 2:45 ☐ a.m. ☒ p.m.  
25

26 6. A hearing on Plaintiff's motion for preliminary injunction is set for

1 the 20<sup>th</sup> day of June, 2005 at 10:00 ☒ a.m. ☐ p.m. Plaintiff shall forthwith  
2 serve Defendants, or their resident agent, or their counsel, with a copy of this  
3 Defendants' response, if any, shall be due by 12:00  
4 Order. P.m. on June 15, 2005.

5 DONE and ORDERED, this 17<sup>th</sup> day of June, 2005, at  
6 San Francisco, California.

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8 United States District Judge  
9 Northern District of California  
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